

PATENT

UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Benoit AMBROISE, *et al.*

Examiner: Hai VO

Appln. No.: 09/734,101

Group Art Unit: 1771

Filed: December 11, 2000

Attorney Docket No.: 10244

For: POROUS BIAXIALLY ORIENTED HIGH
DENSITY POLYETHYLENE FILM
WITH HYDROPHILIC PROPERTIES

Date: April 28, 2003

Mail Stop AF
Group Director, Group 1700
Washington, D.C. 20231#17
KJ
530-03PETITION TO WITHDRAW THE
FINALITY OF OFFICE ACTION

Sir:

Applicants submit that the Final Office Action mailed March 19, 2003, improperly has been made final, and Applicants respectfully solicit the withdrawal of the finality of the Office Action.

A second or any subsequent action on the merits shall be final, except where an Examiner introduces a new ground of rejection that is neither necessitated by an amendment of the claims by the Applicant nor based on information submitted in an Information Disclosure Statement (IDS) [*see*, MPEP §706.07(a)]. Conversely, a final rejection is improper where there is at least one new ground of rejection introduced by an Examiner which was not necessitated by (i) the Applicant's amendment to the claims or (ii) information submitted in an IDS.

In the Action mailed March 19th, the four grounds of rejection set forth by the Examiner are new grounds of rejection that were not necessitated by either an amendment by Applicants or information from an IDS. Consequently, the March 19th Action cannot be a final Action.

Specifically, the Action mailed December 3, 2002, is the prior Action to the March 19th Action, and the December 3rd Action contained a single prior art rejection based on the following U.S. Patents: 5,468,712 to Minato, *et al.* ("Minato"); 6,276,273 to Aurenty, *et al.* ("Aurenty"); and 3,877,372 to Leeds, *et al.* ("Leeds")

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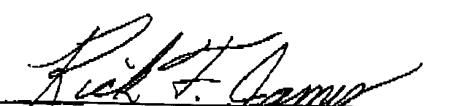
Applicants did not amend the claims in response to the December 3rd final Action. Instead, Applicants presented a traversing argument in a Response filed February 21, 2003, focusing on the patentable distinctions between the claimed invention and the subject matter disclosed by Minato in view of Aurenty or Leeds.

In response to their February 21st filing, Applicants have received the Action mailed March 19, 2003, wherein at paragraph No. 7 (page 4) the Examiner indicates that the traversing arguments served to overcome the §103 rejection based on Minato in view of Aurenty or Leeds. The March 19th Action, however, also includes four new §103 rejections presented at paragraph Nos. 2-5, that employ the following U.S. Patents: 6,383,612 to Waller, Jr., *et al.* ("Waller"); 5,120,594 to Mrozinski; 5,968,643 to Topolkaraev, *et al.* ("Topolkaraev"); 5,721,086 to Emslander, *et al.* ("Emslander"); and 5,326,391 to Anderson, *et al.* ("Anderson").

Waller, Mrozinski, Emslander, and Anderson are all new to Applicants. In fact, they were each made known to Applicants by the Form PTO-892 accompanying the March 19th Action. Because Applicants have not previously considered these references, and Applicants neither amended the claims nor submitted the references in an IDS to necessitate the new grounds of rejection, Applicants respectfully request that the finality of the March 19th Office Action be withdrawn.

Respectfully submitted,

Date: April 28, 2003


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